IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2787 OF 1999

State Bank of India, a body Corporate constituted by and under the provisions of the State Bank of India Act, 1955 having inter alia its Estate Department at State Bank Bhavan, 12th Floor, Central Office, Madam Cama Road, Mumbai 400 021. ... Petitioner

Vs.

1. The Brihanmumbai Municipal Corporation of Greater Bombay, Mahanagar Palika Marg, Opp. C.S.T. Railway Stn. MumbaI 400 001.

2. The Commissioner, The Municipal Corporation of Greater Bombay, Mahanagar Palika Marg, Opp. C.S.T. Railway Stn. Mumbai 400 001.

3. Assistant Engineer, Municipal Corporation of Grater Bombay, Water Department, PSWD, Mitha Nagar, Municipal School Compound, Goregaon (W), Mumbai 400 062.

4. The Assistant Assessor and Collector, P/South Ward, Municipal Corporation of Greater Bombay, Mithanagar, Municipal School Compound, Goregaon (W), Mumbai 400 062.

5. The State of Maharashtra, through the Secretary, Ministry of Urban Development, Government of Maharashtra, Mantralaya, Mumbai 400 021.e

6. M/s. Western House Condominium, Western House, Sonawala Cross Road No. II, Goregaon (E),

Mumbai 400 063. ... Respondents

Mr. Narayan Sahu along with Mr. Santosh Pawar i/by Bhave & Co. for Petitioner.

Mrs. A.R. Joshi for Respondents.

CORAM : F.I. REBELLO,J.
DATED : JULY 28, 2004
ORAL JUDGEMENT:

1. Petitioners by the present petition by way of relief have sought to recall or rescind the letter dated 17.9.1999 whereby Respondent Corporation intimated to the Petitioners that the property tax as set out therein are still payable and for further relief to recall or rescind the warrant of attachment at Exh. AG dated 27.9.1999 issued in connection with non payment of Sewerage tax. Various other reliefs are also sought in terms of Prayer Clause (a). Prayer Clause (b) is for a writ of prohibition to restrain respondents from taking any further steps in respect of the impugned wrongful demand for sewarage taxes as contained in the letter of Respondent No. 4 dated 17.9.1999 at Exh. AH as also the warrant of attachment as set out earlier.

2. A few facts may be set out which are necessary

for deciding the controversy which has arisen and arising out of the subject matter of the petition. The Petitioners contend that it is a body corporate constituted under the provisions of the State Bank of India Act, 1975. It has Central office at Bombay and offices and branches at elsewhere. The Petitioners are in occupation of the premises pursuant to an indenture of lease. Petitioners contend that all along they have promptly and without delay paid the bills raised by Respondent Nos. 1 to 4 in respect of water charges, sewerage charges and property taxes in connection with occupation of the leased premises. The premises were vacated in December, 1988 leaving behind some security guards and finally the premises were surrendered to the Petitioners on 31st July, 1999.

3. On or about 5.2.1997 the petitioner was served with a bill by Respondent No. 3 for purported water supplied to the petitioners at the demised premises which according to the petitioners was exhorbitant as while petitioner was functioning from the premises with 150 staff members, the bills for water consumption and or charges were always in the region of Rs. 8,000/- to Rs.12,000/-. The Petitioner aggrieved corresponded with the

respondents. Respondent No. 3 without applying its mind continued to raise several other bills for water supply which according to Petitioner were exorbitant and unreasonable and not based on actual consumption or on the basis of just average consumption. The Petitioner returned all such bills raised upto September, 1997 with a request to rectify and amend the same and to forward the correct bills. In June, 1997, it is pointed out Respondent No. 3 wrote to the Petitioners setting out that the bills were correct. The Petitioners were also informed by the said letter that the water meter at the demised premises had been removed by Respondent No. 3 in March, 1997 as the same was found defective. The Petitioner was directed to deposit the sum named there towards repairing charges of the meter which the Petitioner did. Inspite of that the petitioner was served with further bills for water charges which were exorbitant and unreasonable and baseless. The meter inspite of charges being paid, was not reinstalled after due repairs nor was the meter replaced.

4. On 10.3.1999 the respondents received demand from Respondent No. 4 for the payment of sewarage

taxes for the period June, 27, 1977 to March 31, 1999 amounting to Rs.25,72,125/- pursuant to disconnection of water supply in June, 1997. It is the case of the Petitioners that they had no knowledge of disconnection of the water supply and neither had any notice been given to them in respect of the matter of disconnection nor were they afforded any opportunity to show cause before disconnection. Inspite of the correspondence, respondent failed to give justice to the Petitioner and on the contrary started demanding sewerage tax as set out in Paragraph 12 of petition. Petitioners therefore, have been served the impugned wrongful warrant of attachment. It is in these circumstances that the Petitioners have preferred the present petition.

. Various additional affidavits have been filed which need not be adverted to. They will be referred to and to the extent if necessary as and when dealing with the submissions as raised on behalf of the Petitioner.

5. Mr. Nitin Amle, on behalf of the Respondents has filed an affidavit dated 20.8.2003. Dealing with the contention of the Petitioners, it is

pointed out that the premises had a water meter fixed of KC make which was fixed on 16.7.1996. It was removed for testing by the Respondents on 18.3.1997 to confirm whether it was working properly or not, as recorded consumption was found to be on the lower side. On testing it was found to be defective and as such the petitioners were called upon to comply with various requirements. Inspite of that petitioners failed to repair the meter and get it tested for re-fixing. The Respondent Corporation does not repair the defective water meters and it is the petitioners who were to get the said repaired through private agency. Water connection to the premises was disconnected on 27.6.1997. Water is supplied to any premises on the basis of meter. Petitioners have to pay the water charge bills which are done on the basis of water meter reading. The water charges were issued on the average basis as the meter was showing on lower side consumption. The Petitioner was disputing the bills of water charges. However, dispute was not registered by the Petitioners in time i.e. within ninety days of computation of each water meter charges bills. Reference is then made to the correspondence in the matter of repair of the meter. It is pointed out

that the question of amendment of water charges bills does not arise unless the petitioners comply with the conditions of the respondents letter dated 29.7.1997 which at the time of the filing of the affidavit, petitioners did not comply with. The water charges bills are issued only upto 27.6.1997.

. It is then pointed out that the Act empowers the respondents to levy sewerage tax subject to the provisions of section 170 of the M.M.C. Act. That section deals with the rules for sewerage tax and charges. The Standing committee of Respondent No. 1 is empowered to make such rules as may be necessary for removing human waste, excrementitious and polluted matters, liquid waste and effluents and any other materials and shall by such rules determine the charges for the supply of such services by way of sewerage tax and sewerage benefit tax levied under section 140 of a percentage of rateable value of any property in respect of which such services are provided. As the petitioners' water connection was disconnected on 27.6.1997, the petitioners instead of sewerage charges had to pay sewerage taxes. It is then pointed out that the sewerage tax has to be levied where the water charges are not levied. The

sewerage tax was levied after disconnection of the water connection. The warrant of attachment was issued for the outstanding bills. The property tax bills issued earlier were cancelled and corrected to include sewerage tax. As the petitioners inspite of full cooperation given by the Respondents and details of outstanding explained to them they have not made payment even for property taxes as mentioned in statement. As and as on 23.7.2003 the outstanding dues towards property tax amounted to Rs.15,66,138/- and sewerage tax amounted to Rs.40,74,288/- and are pending.

6. At the hearing of the Petition on behalf of the Petitioner, no arguments were advanced in respect of the property tax. The argument advanced are in respect of sewerage tax which the Respondents have called upon the petitioner to pay. On behalf of the Petitioners, their learned counsel has submitted as under :

(a) That it was not open to the respondent to levy tax with retrospective effect as there was no such power in the respondents;

(b) As the sewerage tax was not shown in the

assessment book as required to be maintained under Section 156 of the M.M.C. Act, 1888 (thereinafter referred to as "the Act") the respondents could not have demanded payment of sewerage tax and consequently, the demand is without jurisdiction and as such the demand as also attachment are also liable to be quashed and set aside.

(c) It is submitted that the water connection was disconnected without notice to the Petitioners and consequently the action of the Respondents and consequential demand of sewerage tax is without jurisdiction.

. In support of his contention that in the absence of sewerage tax been disclosed in the assessment book under Section 156 of the Act, it cannot be demanded learned counsel has placed reliance in the judgment of the learned Single Judge of this court in the case of The Municipal Borough Sholapupr Vs. The Governor General of India in Council reported in 1946 Vol. XLIX BLR 752 and the judgement of the Apex Court in the case of Municipal Corporation of City of Hubli Vs. Subha Rao Hanumatharao Prayag and others (1976) 4 Supreme Court Cases 830 as also the judgement of the learned Single Judge of this

court in the case of Abdeali Shaikh Tayebali Zaidy and another Vs. The Bombay Housing Area and Development Board and others 1988 Mh.L.J. 707.

. On behalf of the Respondents, their learned counsel points out that pursuant to the powers conferred for charging of water tax under Section 169 of the Act and for sewerage tax under Section 170, rules have been framed which are known as Water Charges Rules and Sewerage and Waste Removal Rule which are made effective from 1.5.1994. We will advert to the rules in the course of the discussion. It is pointed out that the water connection was only disconnected after the petitioner had failed to comply with the demand to pay the dues as is evidenced from the affidavit of Shri. Nitin Amle. It is submitted that after disconnection of water supply, in terms of rule 7.3 of the Sewerage and Waste Removal Rules, water and sewerage tax are levied as laid down in Rule 5.1 of the Water Charges Rules. With the above, we may now deal with the contention raised on behalf of the Petitioners.

7. In so far as the first contention is concerned, there is really no merit in the contention. The

Respondents have not imposed any tax with retrospective effect. All that theRespondents have done is issuance of bills for the period pervious to the date of the bills. In other words the bills are issued for the period for which they are payable by sending a bill after that period. There is no provision either under the Act or rules by which claim for sewerage charges/seweage tax can be anticipated or made in advance. That can only be done subsequent to the charge/taxes becoming due and payable. Retrospectivity in levying tax would mean that a law has been enacted with retrospective effect. That is not the case over here. All that the respondents have done is to merely make demands for charges which had become due prior to issuance of the bills. That cannot be said to be levying of tax with retrospective effect. The first contention must therefore, be rejected.

8. In so far as third contention is concerned, it is contended that the water connection was disconnected without notice to the Petitioners. In Paragraph 2(d) of the affidavit of Mr. Amle, it is set out that by letter dated 29.7.1997, the petitioner was informed that the petitioner's request to issue water charges against said water

connection on actual water consumption by the staff can be considered on compliance with the conditions as set out in the letter and also to get the connection which was disconnected restored. It is pointed out that the due notice of disconnection was served on 10.6.1997 as reflected on Page 46 of that bill. There is some grievance made on behalf of the Petitioners that this is not reflected in the synopsis which was made available to the Petitioners. Be that as it may. Respondent No. 1 like petitioners are both public bodies. The records of Respondent No. 1 shows that the notice was served on the Petitioners and once that be the case, really speaking the petitioner cannot make much grievance. It is not the case of the Petitioner that they were not in default in making payment of the water bill. The contention was that their demand was exorbitant and they had called upon the respondents to amend the bills. The fact remains that they were aware of the disconnection. They were in correspondence with the Petitioners including for replacement of the water meter which was removed and there was no serious grievance made on that count. That contention must therefore, also to be rejected. At any rate that has no bearing on the merits of the dispute as the

sewarage charge and sewarage tax is levied in terms of the rules.

9. We may now deal with the second contention. It is contended that unless sewerage charges are set out in the assessment book to be maintained under Section 156 of the Act, the amount would not be leviable and consequently payable.

. Section 156 provides that the Commissioner shall keep a book to be called "the assessment book" in which shall be entered every official year :

(f) if under section 169, a charge is made for water supplied to any buildings or land by measurement or the water taxes or charges for water by measurement are compounded for, or if, under section 170, the sewerage taxes or sewerage charges **for any building or land** are **fixed at a special** rate**, the particulars and amount of such charges,** composition or rates. (Emphasis supplied).

. This clause was inserted by Maharashtra Act 34 of 1973.

. In so far as sewerage charges therefore, what is clear is that the requirement of maintaining in the register, is, if it is fixed at special rate. Section 170 of the Act permits the Standing Committee to make rules as shall be necessary for removing human wastes, excremetitious and polluted matters, liquid wasters and effluents and any other materials as shall be from time to time be specified by the committee in such rules and for charging any fittings, fixtures or services rendered by the Corporation under Chapter IX and shall by such rules determine the charges for the supply of such services by a sewerage tax and a sewerage benefit tax levied under Section 140 of a percentage of the rateable value of any property in respect of which such services are provided. There are also some other requirements. In other words, there is general power to make rules and the rules themselves provide for charging sewerage tax and sewerage benefit tax as a percentage of rateable value of any property. What theretofore, becomes clear, is that under Section 156(f) what is required to be maintained is only in the event of the special rate is fixed for the sewerage tax or charge and not if rates have been fixed generally. The only requirement therefore, would be that in

terms of Section 156 (f) the rateable value of each building must be fixed. The sewerage charges or taxes are calculated based on rateable value. It is impossible to assume that by amendment of Section 156 by introducing Section 156(f), what the legislature meant was that in respect of every building there ought to be included in the assessment book to be maintained under Section 156, the amount of either sewerage charge or sewerage tax.

. Rules have been framed for levying of sewerage charges and sewerage tax. Under Rule 4.1 wherever water is supplied to any premises by meter measurement, the Municipal Commissioner may, instead of levying sewerage tax, levy a sewerage charge equivalent to 50% of the prescribed water charge and in force from time to time on such premises provided such premises are connected to Municipal Sewer and/or any other Municipal infrastructure such as pipe storm water drain, dhapa drain, built-up drain and open storm water drain, any other channel drain, or to any arrangement which has the effect of transporting fluid water and/or sullage/sludge for further disposal. In terms of Rule 5(1) where water is

supplied to any premises under Section 92 of the Act, whether such premises are connected to Municipal sewers or not and where water charges are recovered on measurement or estimated measurement or on compounded basis as prescribed in the water Charges Rules in force, the Municipal Commissioner shall, in addition to normal sewerage tax or sewerage charges as applicable under these Rules, levy sewerage charges at 50% of the water charges so raised. When there is disconnection of the water supply, then in terms of rule 7.3 of the rules, instead of sewerage charges, sewerage tax as prescribed shall be leviable. Rule 7 is the rule dealing with levy of sewerage tax where sewerage charges are not levied. In other words, what becomes clear is that it will be impossible to know in advance as to whether in respect of the building, the sewerage tax or sewerage charge would become payable. Therefore, a conjoint reading of Section 156(f) and rules framed thereunder must result in holding that all that is required is for the Standing Committee is to frame rules for charging sewerage tax or sewerage charges. The language of Section 156(f) in these circumstances must be strictly construed. The words "at the special rate" will have to be given their due

meaning and that due meaning shall be a rate other than the general rate, fixed under the rates by the Corporation. If the general rates are being charged, then there is no requirement of these rates being provided in the assessment book.

. With that, we may now deal with the judgments as relied upon by the learned counsel.

. In the case of the Municipal Borough Sholapur (supra) what was in issue was the omission or mistake to provide for assessment of property tax. We are not dealing with the case of property tax but demand for sewerage tax. That judgement is therefore, clearly distinguishable. Even otherwise, as explained earlier, there is requirement for providing for the rateable value in the assessment book. The Judgement in the case of Municipal Corporation, Hubli (supra) by the Apex Court is again based on the same Act namely the Bombay Municipal Borough Act. The Apex Court after considering various judgments of several High Courts including of this Court adverted to earlier, observed that three High Courts having jurisdiction over the territories in which the Act is in force have all taken a view over a course of years. It

would not be justified in departing from it, merely on the ground that a different view is possible. The court further noted that the Supreme Court is ordinarily loathe to interfere with the interpretation of a State statute which has prevailed in the State for a long number of years and which the State legislature has chosen not to disturb by legislative amendment. The ratio of that judgement therefore, will have to be restricted to the property tax and or rateable value. The two judgments in my opinion would be of no assistance for the purpose of construing Section 156(f) dealing with sewerage tax/charges. In Abdeali Shaikh Tayebajali Zaidy (supra), gain was a case of levy of repairs cess and the court was dealing with the issue of amendment in the Ward assessment book. As explained earlier we are not dealing with such situation as both in respect of water tax and sewerage tax, it is not possible to determine at a point of time how it will be charged. The only relevant factor for charging water charges/water tax, sewarage charge/sewarage tax would be the Water Charges Rules and Sewerage and Waste Removal Rules and therefore, in my opinion, the judgement in Abdeali Shaikh again is of no assistance to the Petitioner.

10. Having said so, it is clear that by the amendment by which Section 156(f) was introduced, was not a fetter on the Corporation or restriction on the Corporation to charge either water charges/taxes, sewerage taxes/charges. The requirement only was that if there is a power to charge special rates and that power have been exercised then those special rate, would have to be shown in the assessment book. That is the only requirement under Section 156(f).

11. It was lastly contended by the counsel for the petitioner that he had been charged sewerage tax at the higher rate than the rate prescribed. The learned counsel sought to place reliance on rule 7.2. Rule 7.2 applies to the premises which are not in receipt of Municipal water supply. Rule 7.3 however covers the case where the water supply to any premises stands disconnected and where water tax is levied as laid down in Rule No. 5.1.3 of the Water Charges Rules, Sewerage tax. Rule 5.1.3 of Water Charges Rules provide for levy of tax at the rate sanctioned by the Standing Committee from time to time. On behalf of the respondent, leaned counsel points out that for the year 1998 it was

50% for non residential and since 1.4.2000 78%, We are really not concerned with the assessment of 2000 but the rates prevailing earlier. Respondents have charged the Petitioner accordingly. I therefore, do not find that the respondents have acted without jurisdiction and consequently there is no merit in this petition, which is accordingly rejected.

. Rule discharged. No order as to costs.

12. The learned counsel for the Petitioner seeks stay of the order. Considering the findings recorded, no case for grant of stay. Application for stay rejected.

. Personal Secretary to issue authenticated copy of this order.

(F.I. REBELLO,J.)